

1 10, let me -- can you review that, line 10, to yourself? Line
2 10 through 13?

3 A Yes, I read it.

4 Q Does that refresh your recollection as to whether
5 you were advised by Mr. Sander Sandifer, that the, of the
6 \$10,000 offer?

7 A Yes, I recall being advised by Mr. Sandifer and,
8 obviously I approved it, but I don't recall the date.

9 Q Okay, thank you, sir. It's true, is it not, that at
10 the time you approved the \$10,000 price, you had no idea what
11 expenses Raystay had incurred with regard to the Red Lion
12 construction permit?

13 A That's correct.

14 Q I'd like to direct your attention to a document
15 that's been previously admitted into evidence as, TBF, TBF
16 Exhibit 238. You'll find that in the series of documents that
17 I provided to you as well.

18 A Yes, I have it.

19 Q As a note dated December 3, 1991 and my question for
20 you is, at the time you prepared this note, you were aware,
21 were you not, that if the Red Lion construction permit were to
22 be sold to another party, then the application would have to
23 be filed to the, submitted to the FCC seeking approval for the
24 transfer?

25 A Yes.

1 Q I'd like to direct your attention to TBF Exhibit
2 241, which is the Red Lion assignment application dated
3 January 13, 1992.

4 A Yes, I have it.

5 Q Now, prior to the time that this application was
6 filed with the Commission, you had unlimited access to every
7 document at Raystay, did you not?

8 A Yes.

9 Q Would I be correct in assuming that you had
10 unlimited access to Raystay's document through the time that
11 the Red Lion application was granted in March of 1992?

12 A Yes.

13 Q And these documents would have included all
14 correspondence relating to the Red Lion transaction, correct?

15 A Yes.

16 MR. BECHTEL: Wait a minute, wait a minute. I
17 object to that question as, as not having a foundation yet, as
18 asked.

19 JUDGE CHACHKIN: The, the answer will be stricken if
20 an objection pending --

21 MR. HOLT: I can rephrase.

22 BY MR. HOLT:

23 Q The documents to which you're referring that you had
24 access to, being all documents in Raystay's possession, would
25 have included any document that existed concerning the Red

1 Lion transaction, correct?

2 A I don't believe I can answer that question. I have
3 access to all the documents that we have. But whether that
4 specific document would have been there, I really don't know.

5 Q No, sir. I, I don't mean to, maybe my question was
6 confusing. I'm not asking you whether you had access to this
7 specific document. I'm asking you, as a general matter, if a
8 document is in Raystay's files and it pertains to, and if that
9 document had pertained to the Red Lion matter, you would have
10 had access to it, correct?

11 A I would have had access to it, that doesn't
12 necessarily mean I would have known of it, or know where it
13 was, or could have found it.

14 Q And the documents that you would have had access to
15 would have included invoices and other records showing what
16 amounts had been paid by Raystay in connection with its low
17 power construction permits, correct?

18 A Yes, I have access to all of our documents.

19 Q And you could obtain copies of those documents by
20 simply requesting them?

21 A Not necessarily. A lot of times I can recall a
22 document and we can't find it. Our filing systems are not
23 that good, apparently.

24 Q But if that documents in your files you can obtain
25 it by requesting it?

1 A If the documents are in the files and we can find
2 it, yes, I have access to it.

3 Q During the period when the Red Lion application was
4 signed you were out of the office on a trip, correct?

5 A On January 6th, yes.

6 Q My understanding is that you left Raystay's offices
7 on or about December 26th or '7th of 1991, is that right?

8 A After my deposition, I reviewed my desk secretary
9 and the page in there says that I left on December 28th.

10 Q And you returned to Raystay's offices on January
11 10th or 11th of 1992?

12 A I don't have a good reference of that because I
13 didn't record the date that I returned.

14 Q If you turn to page 30 of your deposition testimony,
15 the question was posed to you, "Do you recall when you
16 returned to Raystay's offices from that conference?" Answer:
17 "I believe it was the 10th or 11th of January."

18 A That's correct. And that is just a recollection the
19 same as the 26th or 27th, which I later determined was
20 actually the 28th. The 10th or 11th is an approximation.

21 Q Do you recall being in Raystay's office on January
22 13th of that year, which would have been a Monday?

23 A No, my desk secretary has some notations on the 13th
24 or 14th if I recall. It has sometimes listed. Apparently, I
25 had appointments at those times.

1 Q And, does the fact that those appointments, does the
2 fact that those appointments were listed, suggest to you that
3 you were there to keep the appointments?

4 A Yes.

5 Q During the period that you were out of your offices,
6 did your office know how to reach you?

7 A Yes.

8 Q When I say out of your offices, I mean during this
9 period of time when you were travelling.

10 A During the time I was in California, I left phone
11 numbers where they could reach me all the time.

12 Q Prior to the time that you left for your trip, did
13 you review any documents concerning the sale of the Red Lion
14 construction permit to Mr. Grolman?

15 A I don't recall reviewing any documents, no.

16 Q And you didn't review any documents relating to the
17 sale while you were away on your trip either, is that correct?

18 A I don't recall reviewing any documents at any time,
19 no.

20 Q Nor did you review any of the documents concerning
21 the sale after you returned from your trip, is that correct?

22 A No, I did not.

23 Q It's true, is it not, that at no time before the Red
24 Lion assignment application was granted, in March of 1992, and
25 I will represent to you that that was March 2nd of 1992. Did

1 | you review any documents relating to the transaction to assure
2 | the accuracy of the information being supplied to the
3 | Commission?

4 | A I don't believe I reviewed the documents.

5 | Q If I can direct your attention to paragraph 4 of
6 | your written testimony. You state that if you had been in the
7 | office during the period when the FCC application was signed,
8 | the application would have been placed on your desk for review
9 | and signature. Now, correct me if I'm wrong, sir, but I
10 | understand that Mr. Sandifer was the person at Raystay who had
11 | principal responsibility for overseeing Raystay's transfer of
12 | the Red Lion construction permit to Mr. Grolman, is that
13 | right?

14 | A I'm at a loss here. You say my written testimony
15 | and I can't find the page for it.

16 | Q I'm sorry, sir, its, have you, --
17 | MR. BECHTEL: Page 2, paragraph 4.

18 | BY MR. HOLT:

19 | Q Paragraph 4. Did I say page 4?

20 | A Okay. Paragraph 4 on page 2.

21 | Q Yes.

22 | A All right. And your question was?

23 | Q The first sentence, I believe, it'd just take a
24 | minute to review the sentence.

25 | A Yes, I've read it.

1 Q Now, my understanding is that Mr. Ray, Mr. Sandifer
2 had principal responsibility at Raystay for negotiating the
3 Red Lion transaction. Is that correct?

4 A That's correct.

5 Q All, I'm curious as to why, then, the application
6 would have been reviewed and signed by you if you had been in
7 the office during that time.

8 A Because, I've made a request of everyone that is
9 filing anything at the FCC, that if I'm available to review
10 it, that they give it to me to review and sign. It's just a
11 general request that I ask everyone to adhere to.

12 Q Is that because documents that are being, that are
13 filed on behalf of Raystay with the FCC are being filed by, on
14 behalf of a company that you own and control?

15 A No, it has nothing to do with it. I delegate
16 authority all of, all of the time. And not only to Mr.
17 Sandifer. And, a lot of that delegation allows them to sign
18 documents for various reasons. I had specifically asked them
19 to allow me to review and sign any documents going to the FCC
20 because of my commitment that I will be diligent in everything
21 that we're doing. And, when I'm not there, I can't review it.
22 It was not placed on my desk because I was not there.

23 Q And the commitment derives from the fact that you're
24 the president and --

25 A No, my commitment derives from the fact that I was

1 asked by the FCC to review and make sure everything was
2 correct that I was signing. And I have endeavored to do that.

3 Q But documents that you weren't signing you had no
4 obligation to review.

5 A I don't believe that's a correct statement.
6 Documents that I am not signing, whoever is signing, is
7 certainly exercising all the diligence that they can. In Mr.
8 Sandifer's situation, he worked directly with our
9 communications attorney in the preparation of the documents.
10 I can see nothing that he didn't do that I would have done.

11 Q But if you had been in the offices during the
12 period, your testimony is that you would have reviewed and
13 signed the documents and my question is why? Was it because
14 you are the president of the company, or was it --

15 A No, no. I, I just made a general request that any
16 documents going to the FCC be given to me if I'm there, so
17 that I can review them. Now, before I review them, Mr.
18 Sandifer has had them prepared. That's the generally, the way
19 that the FCC applications or documents of any sort are
20 handled. He has them prepared by various people working for
21 him. He reviews them, then gives them to me, I review them.
22 And if I'm there, I sign them.

23 Q What I'm trying to determine is, if, in an instance
24 such as this where an individual has had principal
25 responsibility for working on the transaction, other than you,

1 in this case it was Mr. Sandifer, why would you have
2 requested, or why had you, why would you have made it assure
3 that you signed and reviewed the application? Why would there
4 have been that transfer from him to you?

5 MR. BECHTEL: I'm going to object. That's --

6 JUDGE CHACHKIN: I think he's asked the question
7 twice already, he felt he had a special commitment with the
8 FCC. I mean, how many times do you want him to say it?

9 MR. HOLT: Okay.

10 JUDGE CHACHKIN: The objection is sustained.

11 BY MR. HOLT:

12 Q Am I correct, sir, that the first time you saw a
13 copy of the Red Lion assignment application was sometime
14 during your preparation for this proceeding?

15 A What was the document you referred to?

16 Q The assign, Red Lion assignment application. I can
17 point you to a copy if that, that'll be helpful.

18 JUDGE CHACHKIN: And what was the question? When
19 was the first time you'd seen it?

20 MR. HOLT: Am I correct, that the first time he saw
21 a copy of the application was sometime during the preparation
22 for this proceeding?

23 WITNESS: I'm not sure which document you're talking
24 about.

25 MR. HOLT: Sure, let me help you --

1 WITNESS: The one that I looked here from here from
2 Dr. Grolman or --

3 JUDGE CHACHKIN: No, the assignment application.

4 WITNESS: Oh, the assignment application.

5 BY MR. HOLT:

6 Q Yes, the application. And, I can direct you to that
7 if it's helpful.

8 A It would help if you'd let me take a look at it.

9 Q Sure, it's at TBF 241, it's in the volume of
10 exhibits on your left.

11 A This is the 6th of January document that, --

12 Q Yes.

13 A Lee Sandifer dated the 6th of January.

14 Q No, I'm sorry, it's dated January 13, 1992, that's a
15 cover letter, and then there's an application and, yes, there
16 would be a January 6th document that Mr. Sandifer saw and the
17 expense certification attached to that.

18 A Yes, I believe the first time I saw it was in
19 preparation for the deposition.

20 Q I'd like to direct your attention that's been, to a
21 document that's been marked for identification as TBF Exhibit
22 290 and it's an FCC authorization dated March 2nd, 1992, which
23 shows that the application was granted on that date.

24 A Yes, I have it.

25 Q I just wanted you to see this to confirm in your

1 mind that that's the accurate date. Now, you'll recall,
2 having just reviewed the application that I directed you to,
3 TBF Exhibit 241, that the filing date was January 14th of
4 1992. And I'm curious, sir, as to why you didn't review the
5 application upon your return from vacation on January 10th or
6 11th of 1992.

7 A Well, this matter was being handled by Lee Sandifer.
8 I had delegated to him the responsibility for handling it.
9 This, this was strictly Lee Sandifer taking my authorization
10 to transfer the permit if he could reach an agreement with Dr.
11 Grolman and informing Lee of decisions that had to be made
12 that I had to concur to. And, then processing it. It would
13 have been no reason for me to have gone back and reviewed his
14 work on this. When this final document came in, he would have
15 filed it as a completed transaction.

16 Q So, that's the same reason why you wouldn't have
17 reviewed the application during the period between the date it
18 was filed on January 14th and the date it was granted on March
19 2nd?

20 A Once he signed the application and it went to the
21 FCC, any review that I would have made would have been after
22 the fact. The review that I would have made would have been
23 before we signed it. Once we signed it, then I assumed that
24 he had investigated everything that needed investigating and
25 had signed it.

1 Q You were --

2 A And I do not go back and review everyone's work
3 after they've done it.

4 Q You were aware at the time between January 14 and
5 March 2nd of 1992 that the Red Lion application was pending at
6 the FCC, were you not?

7 A I was probably informed, yes. I have no
8 recollection of it.

9 Q Let me see if I can refresh your recollection by
10 providing you with a document. I'd like to request that it be
11 marked for identification as TBF Exhibit, are we at 296 now?

12 JUDGE CHACHKIN: And what, what is the document --

13 MR. HOLT: It's a two, I'm sorry 293. It's a two
14 page document, consisting of a page one on the letterhead of
15 Cohen and Berfield. It's a letter to Donna Searcy at the
16 Commission dated February 13, 1992 and attached to it is a
17 document which is identified as an amendment.

18 JUDGE CHACHKIN: The document described by counsel
19 is marked for identification as TBF Exhibit 293.

20 (Whereupon, the document referred to
21 as TBF Exhibit No. 293 was identified
22 for the record.)

23 MR. HOLT: Provide a copy to the witness, a copy to
24 the court reporter, a copy to the Bureau.

25 BY MR. HOLT:

1 Q Take a moment to review this document, sir. If you
2 turn to page two of the document, is that your signature?

3 A Yes, it is.

4 Q Right here above George F. Gardner, above the words
5 George F. Gardner, President?

6 A That's my signature, yes.

7 Q And did you sign the document on the 2nd of Feb, or
8 12th of February, 1992?

9 A That's correct.

10 Q Does this refresh your recollection about being made
11 aware of the application prior to the date that it was granted
12 by the FCC on March 2nd?

13 A Yes, it does.

14 Q Before signing this amendment, did you did you take
15 any steps to confirm that the Red Lion application referenced
16 in the amendment had been filed with the Commission?

17 A This amendment was prepared by my FCC counsel and
18 filed because the record had to be kept current and I accepted
19 their advice that this was a correct statement because,
20 obviously they have all of our records on this.

21 Q Did you discuss the application with FCC counsel on
22 or around the time that you signed the amendment?

23 A I did not discuss the application but I did accept
24 the fact that they had the application and signed this, yes.

25 Q Did you discuss the application with anyone at

1 Raystay on or about the time that you signed this amendment?

2 A I wouldn't have any recollection of it and there
3 would have been little reason for me to insert someone in my
4 office between myself and Mr. Cohen. I would have worked
5 directly with Mr. Cohen on that.

6 Q Isn't it a fact, sir, that at the time the Red Lion
7 application was filed with the Commission you were not aware
8 of any of the work that Cohen and Berfield had done on the
9 application?

10 A I don't recall being aware of any of that, no.

11 Q Nor were you aware of any of the work that Mr.
12 Sandifer had done on the application, isn't that correct?

13 A I was probably aware of the work that he was doing
14 on it, but that doesn't mean that I saw any of the paper.

15 Q Let me direct --

16 A He likely kept me informed on it.

17 Q Let me direct your attention to page 35 of your
18 deposition testimony. And if I can direct you to line ten, my
19 question was, while at the time you were away during this
20 trip, were you aware of any of the work that Mr. Sandifer had
21 done on the application, and your response was, no. Is that
22 correct?

23 A I'm not aware of when Mr. Sandifer was working on
24 this except in reviewing the various depositions and in
25 preparation for here. I've seen the dates and some of the

1 | things that were done. I've seen the documents, yes.

2 | Q So, your response to that question at your
3 | deposition was no?

4 | A At that time, I think that was the correct answer.

5 | Q And you didn't know what work David Gardner had done
6 | on the application at that time, did you? I mean, when I say
7 | at that time, I mean at the time of the filing.

8 | A At the time of the deposition?

9 | Q The time of the filing of the application.

10 | A No.

11 | Q And, isn't it also true that at the time the Red
12 | Lion application was filed with the Commission, you had no
13 | knowledge as to whether or not anyone from Cohen and Berfield
14 | had reviewed the application before it was filed?

15 | A I was not involved in it. I did not know what Lee
16 | Sandifer was doing with it.

17 | Q You had no knowledge as to whether anyone from Cohen
18 | and Berfield had reviewed the application at the time it was
19 | filed?

20 | A That's correct.

21 | Q Nor did you have any knowledge at the time as to
22 | whether Mr. Sandifer had reviewed the application before it
23 | was submitted to the Commission, did you.

24 | MR. BECHTEL: I'm going to object. This is
25 | cumulative. It's been asked and answered. He has indicated

1 | it at least twice that he was not involved in the process and
2 | this is, this repetitious, it's a series of repetitious
3 | questions that are attempting to ask the same subject, same
4 | question.

5 | MR. HOLT: Your Honor, I believe Mr. Gardner has
6 | indicated that he left this to Mr. Sandifer because he was
7 | aware that Mr. Sandifer had reviewed it and that's why,
8 | reviewed the application, that's one of the reasons why he
9 | didn't go back and review it during the period while it was
10 | pending. And this question was seeking to establish that he
11 | had no knowledge as to whether or not Mr. Sandifer --

12 | JUDGE CHACHKIN: Well, obviously he didn't have
13 | personal knowledge since he wasn't there to see him. He left
14 | it in Mr. Sandifer's hand he testified to. I don't think we
15 | could -- more on the record, that, that's the fact, he left it
16 | in Mr. Sandifer's hands when he was on vacation and Mr.
17 | Sandifer handled the whole transaction. Now, how would he
18 | have personal knowledge of what documents Mr. Sandifer
19 | reviewed at the time if he wasn't there to observe him?

20 | MR. HOLT: Yes, Your Honor. My question doesn't
21 | seek to determine whether he had knowledge of the specific
22 | documents that were reviewed by Mr. Sandifer, but as to
23 | whether he had any knowledge of whether Mr. Sandifer had
24 | reviewed any of the documents at all. And that was basis for
25 | why he said he didn't review any of the materials during the

1 pendency of the application.

2 JUDGE CHACHKIN: He said he entrusted the task to
3 Mr. Sandifer. He didn't, he wasn't there to look over his
4 shoulder. He only had to assume that Mr. Sandifer would carry
5 out his responsibilities in a responsible manner, that's,
6 that's all he had. Now, I don't, you want a specific answer
7 to what --

8 MR. HOLT: Whether he had any knowledge whatsoever
9 as to whether Mr. Sandifer had reviewed the application at the
10 time it was filed.

11 WITNESS: I had no knowledge of that.

12 MR. BECHTEL: I object. It's cumulative. It's been
13 asked and answered.

14 JUDGE CHACHKIN: Well, I'll overrule your objection.
15 The witness says he had no knowledge of that, let that be in
16 the record. It's the same thing over and over again.

17 MR. HOLT: Thank you, Your Honor.

18 BY MR. HOLT:

19 Q So, when you use the phrase, if I can turn you back
20 to paragraph 4 of your direct testimony, and you use the
21 phrase in the second sentence, I am informed that the expense
22 categories and amounts on the expense certification by, were
23 prepared by Mort Berfield, etc., what you're saying is that
24 you were informed of that information recently in, during the
25 course of your preparation for these proceedings, is that

1 correct?

2 A Yes.

3 Q Can I, if I could, direct your attention to Cohen
4 and Berfield invoices that are attached to Glendale Exhibit
5 224, which is the testimony of Mort Berfield. They're not in
6 the blue volumes, they, they would be in a beige volume.
7 Perhaps your counsel can give it to you.

8 JUDGE CHACHKIN: I think the witness has it.

9 WITNESS: Is this at?

10 MR. HOLT: Well, I might, I might be able to ask
11 these questions without referring to the documents. You can
12 provide him with a copy.

13 MR. BECHTELL: Well, I don't have a copy.

14 WITNESS: And what page?

15 BY MR. HOLT:

16 Q Well, let me begin by asking generally, to your
17 knowledge was it the policy of Raystay's accounting department
18 during the period, during the period 1989 through 1992, to
19 maintain copies of legal invoices such as the ones that you
20 see before you in its files?

21 A I, I don't see them before me. If you'll tell me --

22 Q Okay, yeah, sure. They're, they're the legal
23 invoices that are attached to Mr. Berfield's testimony
24 commencing at page 16. You can take a moment to review those,
25 16 through 25.

1 A Yes, these appear to be invoices that we received
2 from Cohen and Berfield.

3 Q And to your knowledge, was it Raystay's practice to
4 maintain copies of these invoices in its files?

5 A Yes.

6 Q Were they maintained chronologically by vendor, do
7 you know?

8 A I don't recall how they're filed.

9 Q Now, if a check were cut to pay an invoice such as
10 this, was it Raystay's policy to keep a copy of the check in
11 its files along with the invoice?

12 A I wouldn't be able to answer that question.

13 Q I'd like to focus your attention on a document on
14 page seventeen. It's an invoice dated April 4, 1990. Do you
15 have that document before you?

16 A Yes, I have it.

17 Q It makes reference to Adwave Company and my question
18 is, were you the person who is responsible at Adwave Company
19 for receiving invoices for legal services performed, performed
20 on behalf of that corporation, yes or no?

21 A The Adwave Company accounting was done by Waymaker
22 Company and I generally am responsible for everything they do
23 but that doesn't mean that an invoice would have gone across
24 my desk.

25 Q The accounting was done by Waymaker Company?

1 A Waymaker Company provides the accounting service for
2 all of my companies.

3 Q You were the person who is responsible for receiving
4 invoices from Adwave, correct?

5 A I was the principal of Adwave. The invoices may not
6 have gone across my desk.

7 Q Let me direct your attention to page 38 of your
8 deposition testimony. I'm going to read the question and
9 answer and I'm going to ask you to confirm whether or not it
10 was a question and answer you gave. Question: "And you were
11 the person responsible at the time for receiving invoices for
12 legal services performed on behalf of Adwave." Answer:
13 "Yes." Was that the question and answer that was given at
14 your deposition?

15 A What line were you on?

16 Q Line 4 through 7 on page 39.

17 A Oh, 39.

18 Q I'm sorry, I must have directed you to the wrong
19 page.

20 A Four through 7. At Adwave, as I say, I was the
21 principal.

22 Q Was that the question and answer that was posed to
23 you?

24 MR. BECHTEL: Now, wait a minute, wait a minute. If
25 this, if this --

1 MR. HOLT: My question is simple --

2 MR. BECHTEL: No, sir, I object. If this question
3 and answer is used to impeach, then you can ask it.

4 MR. HOLT: That's what I'm doing.

5 MR. BECHTEL: But if it's, if it's used to refresh
6 his recollection you cannot. Now, if you want to impeach him,
7 let me give him additional lines to read and we'll read them
8 all. That's the procedure.

9 MR. HOLT: Are you speaking --

10 MR. BECHTEL: I'm speaking to you.

11 MR. HOLT: I'd appreciate it if you would direct
12 your comments to the Judge.

13 JUDGE CHACHKIN: Well, are you using it for --

14 MR. HOLT: Your Honor, I'm using it for impeachment
15 purposes.

16 JUDGE CHACHKIN: All right, then Mr. Bechtel has a
17 right to read other portions of this, of this deposition.
18 You've read your question and answer?

19 MR. HOLT: That was, yes, I've read my question,
20 that question and answer and my second question and answer was
21 Question, line thirteen: "Well, I'm asking you whether you
22 were the person responsible for paying invoices directed to
23 Adwave." Answer: "Yes."

24 JUDGE CHACHKIN: Now, Mr. Bechtel, do you want to
25 respond?

1 MR. BECHTEL: Sure, give me a second. I'm going to
2 start reading, I'm going to start reading on page thirty-eight
3 at line 5. And I'm going to to forty, line eleven.

4 JUDGE CHACHKIN: Go ahead.

5 MR. BECHTEL: All right. Question, this is on,
6 beginning on 38, line 5. Question: "Correct. Now, if you'll
7 also direct your attention to an invoice dated April 4, 1990,
8 there is a Bates stamp 90131." Answer: "Yes, I have that."
9 Question: "And an invoice dated March 1, 1990 bearing the
10 Bates stamp 90132."

11 MR. HOLT: I believe that says May, May 1.

12 MR. BECHTEL: May 1, sorry. Answer: "I have that."
13 Question: "I believe you also should have an invoice dated
14 May 1, 1990 bearing the Bates stamp 90133." Answer: "I have
15 that." "Those are all directed to your attention and make
16 reference to Adwave Company." Answer: "Yes." Then my
17 question is: "Why were these invoices directed to you
18 regarding the Adwave Company as opposed to David Gardner?"
19 Answer: "Well, David Gardner had nothing to do with the
20 Adwave Company." Question: "You are a principal of Adwave
21 Company during that period, correct?" Answer: "Yes."
22 Question: "And you were the person responsible at the time
23 for receiving invoices for legal services performed on behalf
24 of Adwave?" Answer: "Yes." "And you were the person for
25 paying invoices for legal services rendered to Adwave,

1 correct?" Answer, "I have to state this. These were not
2 directed to Adwave. These were directed to Raystay."
3 Question: "What I'm asking you whether you were the person
4 responsible for paying invoice directed to Adwave." Answer:
5 "Yes." Mr. Bechtel: "Excuse me, excuse me. Have you
6 finished your answer?" The Witness: "Yes." Mr. Bechtel:
7 "All right. Both of you are going pretty fast and if you
8 could slow down and go on occasion, sir, you're doing very
9 well. But if you could slow down and let him finish I think
10 we'd have a better record of us speaking to Mr. Gardner." The
11 Witness: "Sure." Mr. Bechtel: "I think you stepped on him,
12 there, at that particular one, Mr. Holt." Mr. Holt: "Well,
13 during this period of time, Adwave was not an operating
14 division of Raystay, was it?" Answer: "It never was."
15 Question: "Nor was it an affiliated entity, correct?" "No."
16 "And in fact, there was no connection between Adwave and
17 Raystay other than the fact that you were a common stockholder
18 of both?" Answer: "That's correct." "Thank you, sir."
19 MR. HOLT: I'd like to direct your attention to a
20 document --
21 JUDGE CHACHKIN: Well, I'd still like to, you still
22 haven't -- for me when you say you were responsible for
23 payment. What does that, what do you mean by that?
24 WITNESS: The Waymaker Company I use to do all of
25 our accounting. I'm in charge of the Waymaker Company. I

1 have various people, such as Lee Sandifer who directly takes
2 all of the work and sees that it's done. Many times an
3 invoice that's directed to me, with my name on it, will not
4 come across my desk, even though I might be responsible for
5 it. In the Adwave situation, all of the Adwave's invoices
6 would have come to either our accounting department or to me.
7 But, they might have had my name on them and since it was an
8 invoice it would have just been directed by the mail
9 department to the accounting department and I wouldn't have
10 seen it.

11 JUDGE CHACHKIN: Go ahead, Mr. Holt.

12 BY MR. HOLT:

13 Q My first question for you is were the questions and
14 answers that we just reviewed true? And the facts that were
15 discussed in those questions and answers true, at the time you
16 gave them at your deposition testimony?

17 A When I say that I'm responsible for receiving all
18 the invoices, that's correct. It may have my name on it. But
19 that doesn't mean that I would have seen it, would have opened
20 the mail, would ever have had any knowledge of it. It would
21 have gone to the accounting department and other people would
22 have general directions from me that if these invoices were
23 proven out as being correct, they should be paid. I would not
24 even see it, I wouldn't approve it.

25 Q Is that true during the period when Cohen and

1 Berfield represented you during the Adwave proceeding? What
2 that the practice of Raystay in terms of how it received
3 invoices --

4 A Raystay was not involved in Adwave. Adwave was a
5 company formed by me. I was the principal. And the Waymaker
6 Company accounting department handled all of the payments of
7 Adwave. Raystay was not involved.

8 Q So, during the period while the Adwave proceeding,
9 that was the Ft. Lauderdale proceeding, when we refer to it as
10 the Adwave proceeding --

11 A Yes.

12 Q Was, was pending, were invoices directed to the
13 Adwave Company sent to Raystay Company care of George Gardner,
14 P.O. Box 38, Carlisle, PA?

15 A I believe I've seen some invoices directed that way
16 by Cohen and Berfield, yes.

17 Q So this invoice that we're referring to here, April
18 4, 1990 reflects the, or it is consistent with the practice of
19 Cohen and Berfield in terms of where it was directing Adwave
20 invoices during the period when the Adwave proceeding was
21 pending, was that right?

22 A Well, during the preparation for the deposition, I
23 noticed that some invoices were incorrectly addressed, or
24 incorrectly interpreted by my accounting department, yes.
25 Now, if you refer to a specific invoice, I don't have it in